

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States
Department of Housing and Urban
Development, on behalf of

██████████ and ██████████

Charging Party,

v.

Kenneth McCoy,

Respondent.

HUDALJ No.:

FHEO Nos.: 05-10-0470-8

05-10-0469-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about January 15, 2010, Complainant ██████████ ("Complainant ██████████") and Complainant ██████████ ("Complainant ██████████") filed verified complaints with the United States Department of Housing and Urban Development (the "HUD Complaints"), alleging that Respondent Kenneth McCoy ("Respondent"), violated the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601 *et seq.* (the "Act"), by discriminating against them based on their race, in violation of 42 U.S.C. § 3604(a). On or about August 10, 2010, the HUD Complaints were amended to add allegations that Respondent also violated 42 U.S.C. § 3604(b) and 42 U.S.C. § 3604(c) on the basis of race.

The Act authorizes the issuance of a charge of discrimination on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g)(1) and (2). The Secretary has delegated to the General Counsel (54 Fed.Reg. 13121), who has retained and re-delegated to the Regional Counsel (73 Fed.Reg. 68442) the authority to issue such a charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee.

The Office of Fair Housing and Equal Opportunity Region V Acting Director, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that discriminatory housing practices have

occurred in this case based on race, and has authorized and directed the issuance of this Charge of Discrimination ("Charge").

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned HUD Complaint and Determination of Reasonable Cause, Respondent Kenneth McCoy is charged with discriminating against Complainant [REDACTED], Complainant [REDACTED], and Complainant Robinson's minor children, aggrieved persons, as defined by 42 U.S.C. §3602(i), based on race, in violation of 42 U.S.C. §3604(a), (b) and (c) as follows:

1. "Aggrieved person" includes any person who claims to have been injured by a discriminatory housing practice. 42 U.S.C. § 3602(i).
2. It is unlawful to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race. 42 U.S.C. § 3604(a).
3. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling because of race. 42 U.S.C. § 3604(b).
4. It is unlawful to make, print or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. §3604(c).
5. Complainant [REDACTED] and Complainant [REDACTED] are both African Americans. Complainant [REDACTED] holds a Housing Choice Voucher ("Section 8 voucher"); Complainant [REDACTED] is listed as a member of Complainant [REDACTED] household. Complainants have lived together since around 2006, along with Complainant [REDACTED] minor children.¹
6. In or around August of 2009, Complainants started searching for new rental housing because their then-current unit did not pass HUD's mandatory housing quality inspection standards, rendering the property no longer suitable for rental under the Section 8 program.
7. At all times relevant to this Charge, Respondent owned at least five single-family rental properties in Green Bay, Wisconsin, including a three-bedroom house located at [REDACTED] Green Bay, Wisconsin ("Subject Property").²

¹ At all times relevant to this charge, Complainant [REDACTED] three children, [REDACTED] and [REDACTED] resided with Complainants. [REDACTED] has since reached the age of majority and is no longer a member of Complainants' household.

² Other rental properties owned by Respondent are located at: 830 Oregon St., 310 S. Clay St., 816 Shea Ave., and 1242 Vanderbraak St., Green Bay, Wisconsin.

8. Respondent owns a motorcycle dealership with at least three locations, specializing in Harley-Davidson motorcycles.
9. At all times relevant to this complaint, and on information and belief, some employees of Respondent's motorcycle dealership locations assisted Respondent in the management of his rental housing, including Charles "Kiley" Trasti,³ Maureen Occhino and Karen Peterson.
10. On or about August 15, 2009, Complainant [REDACTED] read an advertisement in the *Green Bay Press-Gazette* newspaper advertising one, two, three and four bedroom houses available for rent. The advertisement listed the telephone number 920-494-5256 as the contact number for prospective renters to inquire about available rentals.
11. The telephone number 920-494-5256 is listed to one of the Harley-Davidson motorcycle locations owned and managed by Respondent, specifically the location at 727 North Memorial Drive, Green Bay, Wisconsin. Respondent has had that telephone number since approximately 1969; that telephone number rings to the location where Respondent is most often present; and it is answered by Respondent or his employees.
12. At all times relevant to this complaint, Complainant [REDACTED] and Complainant [REDACTED] were interested in securing new rental housing in Green Bay in order to ensure that Complainant [REDACTED] children remained in the school district they were attending at the time Complainants were seeking housing.
13. On or about August 15, 2009, at approximately 9:49 a.m., Complainant [REDACTED] telephoned 920-494-5256, the phone number listed in the rental advertisement, to inquire about the advertised three bedroom house, which was the Subject Property.
14. Complainant [REDACTED] has a voice that is racially identifiable as the voice of an African American female.
15. On or about August 15, 2009, Complainant [REDACTED] call was answered by a man later identified as "Kiley," Respondent's employee, Charles "Kiley" Trasti ("Trasti"), who worked at the Harley-Davidson location at 727 North Memorial Drive in Green Bay and routinely answered calls placed to 920-494-5256.
16. During the August 15, 2009 call, Trasti informed Complainant [REDACTED] that the Subject Property was available and that the rent for the Subject Property was \$875. Trasti further advised Complainant [REDACTED] to call back the next day to speak to "Ken."

³ During a deposition with Complainants' counsel, Respondent testified that this employee, commonly referred to as "Kiley," is Charles "Trosky." The investigation confirmed that this employee is actually named Charles "Trasti."

17. On or about August 17, 2009, at approximately 10:14 a.m., Complainant [REDACTED] again called 920-494-5256. This time, she spoke with a man who identified himself as "Ken," Respondent Kenneth McCoy. Complainant [REDACTED] informed Respondent that she had previously called to inquire about the three bedroom house located on [REDACTED] and that she was interested in seeing the house. Respondent responded that someone was working on the Subject Property that day and she could go by any time to see the house.
18. On or about August 17, 2009, at approximately 1:30 p.m., Complainant [REDACTED] visited the Subject Property. The Subject Property, however, appeared empty and nobody answered the door when she knocked. After looking around the outside of the Subject Property, Complainant [REDACTED] left.
19. On or about August 17, 2009, at approximately 2:00 p.m., Complainant [REDACTED] again called 920-494-5256 and spoke to Respondent. Complainant [REDACTED] explained that [REDACTED] had visited the Subject Property but was unable to enter and asked if she could schedule an appointment to see the Subject Property. Rather than respond to Complainant [REDACTED] request for an appointment, Respondent asked Complainant [REDACTED] why she wanted to move. Complainant [REDACTED] answered that her landlord failed to make necessary repairs and then volunteered that she always paid her rent on time. Respondent requested the name and contact information for Complainant [REDACTED] landlord, which she provided. Respondent then asked how many people would be living in the Subject Property, to which she responded, "Five people; myself, my roommate and three kids," or words to that effect. Respondent next asked where Complainant [REDACTED] was from, and she responded "I am originally from Milwaukee." Respondent informed Complainant [REDACTED] that he would call her later that day.
20. Respondent did not call Complainant [REDACTED] on August 17, 2009.
21. On or about August 18, 2009, at around 9:45 a.m., Complainant [REDACTED] again called 920-494-5256 and spoke with the same man she had spoken to the day before, Respondent McCoy. When Complainant [REDACTED] inquired why Respondent did not call her as promised, Respondent responded that his "partners" had discussed the matter and decided that they would not rent to anyone from Milwaukee. Respondent explained that "they" had problems with people from Milwaukee before. When Complainant [REDACTED] protested that Respondent was stereotyping and not giving her a fair chance, and that she was a good tenant, Respondent told her that he did not make the decision, his "partners" did, and there was nothing he could do.
22. In reality, Respondent has no business partners in his residential rental business.
23. According to the 2000 U.S. Census, Milwaukee's African American population is approximately 37%, compared to 1.4% in Green Bay.

24. Suspecting that Respondent refused to deal with them because of their race, Complainants contacted the Metropolitan Milwaukee Fair Housing Council ("Metro Milwaukee"), a nonprofit organization whose mission is to promote fair housing.
25. On or about August 26, 2009, Complainant [REDACTED] called 920-494-5256 from the offices of Metro Milwaukee. With the permission of Complainant [REDACTED], the conversation was recorded by Metro Milwaukee.
26. Trasti answered the August 26, 2009 telephone call from Complainant [REDACTED]. Trasti told Complainant [REDACTED] that he did not know if the Subject Property was still available, even though the Subject Property had not yet been rented. Trasti told Complainant [REDACTED] that Respondent would be available the next day.
27. On or about August 27, 2009, Complainant [REDACTED] again called 920-494-5256 from Metro Milwaukee's offices. Metro Milwaukee again recorded the conversation with the permission of Complainant [REDACTED].
28. Complainant [REDACTED] August 27, 2009 call was answered by a man who identified himself as "Ken," Respondent McCoy. During the August 27, 2009 call, Complainant [REDACTED] asked Respondent if he would talk to his partners about renting to people from Milwaukee, adding that she needed a "place right now." Respondent responded, the "neighbors may have trouble with it, that's the problem." Complainant asked, "With what?" Respondent replied, "It's a nice neighborhood there and I wanna keep it that way." When Complainant [REDACTED] protested that she and her family would not make a difference as far as being bad neighbors, Respondent answered that he was looking for someone who *would* make a difference. Respondent added that he would re-enter her application for consideration, but a moment later, remarked that his partners had "laughed at him" the last time. Complainant [REDACTED] asked him if his partners had laughed at him because he was considering an applicant from Milwaukee, but Respondent said he did not know. When Complainant [REDACTED] inquired when she would hear back from him, Respondent said he could not "make any promises." Complainant [REDACTED] asked Respondent if the Subject Property was still available, and Respondent said that it was still available. When Complainant [REDACTED] said that she would expect his return call, Respondent replied, "it sounds like you have high expectations" and that she was "really optimistic."
29. Fifteen minutes after ending her August 27, 2009 call with Respondent, Complainant [REDACTED] remembered that Respondent never took an application from her. She immediately called 920-494-5256 again and asked for Respondent. When Complainant Walker informed Respondent that she had not filled out an application for consideration, Respondent answered that he saved the paper on which he wrote down her responses to his earlier questions.
30. Respondent never called Complainant [REDACTED] after August 27, 2009.
31. On or around August 28, 2009, Respondent accepted an application to rent the Subject Property from two white applicants named [REDACTED] and [REDACTED].

[REDACTED], who were moving to Green Bay from [REDACTED] about 90 miles away from Green Bay.

32. On or about August 31, 2009, Metro Milwaukee prepared a test of Respondent's rental practices, assigning a white female tester ("white tester") with similar rental qualifications and household composition to that of Complainants to contact Respondent regarding renting the Subject Property.
33. The white tester used a pseudonym, "Amanda Kowalski," a name that was racially identifiable by its white surname. The tester also had a voice that was racially identifiable as the voice of a white female.
34. On or about September 1, 2009, at approximately 9:10 a.m., the white tester called 920-494-5256 and spoke with a man who later identified himself as "Kiley," Respondent's employee, Charles Trasti. The white tester told Trasti that she was looking for a three bedroom house. Trasti told the white tester that the Subject Property and another property were available to rent. He asked the white tester where she was from, to which she responded that she was living in Milwaukee and transferring to Green Bay. Trasti asked her how many people would "live there" and the white tester responded, "...myself and my 3 children..." Trasti told the white tester that he would pass the information on to Respondent, who would call her back.
35. On or about September 4, 2009, at approximately 2:50 p.m., the white tester called 920-494-5256 again and asked for "Ken." The white tester was transferred to Respondent, who asked questions about where she was from, her family composition and her work. He also asked her about pets. Respondent eventually took the white tester's phone number and told her that he would call her back that day.
36. On or about September 4, 2009, at approximately 4:57 p.m., Respondent called the white tester back and left a voice message stating that he had two "nice" properties available. Respondent informed the white tester that the available houses were "clean" and "unoccupied." Respondent left the white tester an internet address where she could view the houses online at www.fsboavenue.com, repeating the internet address twice.
37. On or about September 4, 2009, at approximately 5:08 p.m., the white tester returned Respondent's call. She called 920-494-5256 and spoke with a man who identified himself as "Ken," Respondent McCoy. The white tester told Respondent that she was moving to Green Bay from Milwaukee with her family and she needed a three bedroom house. Respondent repeated to the white tester that he had two houses available that were "clean" and "unoccupied." Respondent also repeated that the white tester could see the houses "online" and explained that the houses were for sale, but, because the market was poor, he intended to rent the properties out.
38. During the course of the September 4, 2009 conversation with the white tester, Respondent told the white tester that the homes he had for rent were in the "central part of town" and remarked, "...most people don't want to live in town," or words to

that effect. He recommended, against his own interest, that she consider Howard, instead. When the white tester said that, being from Milwaukee, she was unfamiliar with the area, Respondent described the neighborhood to her, stating that where the houses were located there were, "grandmas and grandpas, Mexicans, African Americans and some 'lights,' as well," or words to that effect. He concluded, "It is not a good part of town." Respondent went on to explain, "I just want to let you know this before you drive all the way up here to see them," or words to that effect. After telling the white tester about how he got into the rental market, Respondent further commented, with reference to his rentals, "I just want to explain where they are." However, he then added the caveat, "It is not violent like Milwaukee," or words to that effect.

39. Also during the course of the September 4, 2009 conversation with the white tester, Respondent commented on the schools that the white tester's children would attend if she rented from him. He explained that the schools would be on the east side of town. Respondent told the white tester that a "variety" of people attend the east side schools, specifically mentioning that "Hmong families" go to the school. Respondent explained, "I just want you to know the situation so you do not wrinkle your nose when you get there," or words to that effect. The white tester said she was still interested and asked for an appointment the following Wednesday, to which he agreed. They concluded the call with Respondent telling the white tester that she should "keep in touch and call" if she had any questions.
40. That same evening, on or about September 4, 2009, at approximately 5:32 p.m., the white tester called 920-494-5256 again. The call was answered by a man identifying himself as "Ken," Respondent McCoy. The white tester explained that she was calling back for the addresses of the properties to which he had referred her. Respondent told the white tester that the properties were located at [REDACTED] and [REDACTED], the Subject Property. After comparing the relative merits of the properties, Respondent asked the white tester how long she planned to rent, to which she responded that she preferred a month-to-month lease, but may stay longer. Respondent offered to provide the white tester with appliances, for an additional cost. Respondent encouraged the tester to "keep calling" if she had any questions.
41. On or about September 10, 2009, at approximately 4:15 p.m., the white tester called 920-494-5256 again and spoke with Respondent. The white tester identified herself as the woman who was transferring from Milwaukee and asked Respondent the rental rate for the Subject Property and whether Respondent would enter into a year lease. Respondent quoted her a rental rate of \$770 a month and said that he accepted year leases. After discussing the ages of the white tester's children and her timeframe for rental the call ended.
42. On or about October 1, 2009, [REDACTED] and [REDACTED] the white couple from [REDACTED], moved into the Subject Property. Their monthly rent was \$775. Upon information and belief, [REDACTED] and [REDACTED] moved out of the Subject Property near the end of December of 2009.

43. During the investigation, Respondent admitted that he never had any partner in his rental business during the time relevant to this case. Additionally, Respondent admitted that he made all the decisions related to rental applicants.
44. During the investigation, Respondent was not able to establish that he has ever rented to an African American tenant. Respondent's employee, Trasti, was similarly unable to recall even one African American tenant during the approximately 11 years that he has assisted Respondent with managing his rental properties.
45. When interviewed by the Department, Respondent stated that the neighbors of his rental properties had "problems" when he rented to "some Mexicans and some lesbians" and further stated that he had to decide "who is more important," the neighbors with whom he has relationships or the prospective tenants when making his rental decisions. He also stated that the neighbors are "protecting" his properties.
46. While testifying under oath, Respondent referred to white tenants as "normal people" when contrasting them to "blacks or Mexicans."
47. During a HUD interview, Respondent stated that people from Milwaukee are "less respectful."
48. Respondent has no standard minimum rental qualifications for tenants of his residential rental properties. Respondent testified under oath that he rents to applicants based on his "feel" for the applicants.
49. During the investigation, Respondent stated to HUD that he checks credit and uses Wisconsin's Circuit Court Automation Program ("CCAP") to check criminal backgrounds. However, he testified under oath that he does not check credit or criminal backgrounds of prospective tenants and that he is not familiar with a CCAP report. When interviewed by HUD, Respondent's employee, Trasti, stated that Respondent only checks credit or criminal backgrounds "when necessary."
50. During the investigation, Respondent admitted that he has accepted, and would accept, applicants with Section 8 vouchers. When interviewed by HUD, Respondent's employee, Trasti, also stated that Respondent has accepted Section 8 tenants.
51. Respondent admits that he rented to white applicants who made insufficient income to pay the rent for his rental properties. Specifically, Respondent testified under oath that he rented [REDACTED], with a rental rate of \$710 a month to [REDACTED], a white tenant with only \$500 a month in income. Respondent also testified under oath that he rented the Subject Property, with a rental rate of \$775 a month, to [REDACTED] and [REDACTED], a white couple with a combined income of \$600 per month.
52. Respondent testified under oath that he does not accept tenants who only want to stay for one year, yet Respondent did not reject the white tester when she told him that she

preferred a month-to-month lease and, when the white tester subsequently asked if Respondent would consider a "year lease," he responded affirmatively.

53. Respondent told the Department that he refused to rent to Complainant [REDACTED] because he perceived her as a "complainant" who would be a problem tenant when she told him that she was moving because her then-landlord had not made necessary repairs. Yet, Respondent rented to [REDACTED], a white tenant, who attached to her rental application a full-page handwritten grievance against her landlord for, among other things, failure to make necessary repairs, and who Respondent later evicted.
54. In response to Requests to Admit served on him by the Department, Respondent wrote in the margins of the Requests to Admit that it was "common sense" not to rent to Complainant [REDACTED] because she was from "out of town," and "not working in the area." Yet, Respondent ultimately rented to tenants [REDACTED] and [REDACTED], a white couple relocating from [REDACTED], approximately 90 miles from Green Bay. Respondent was also willing to show the Subject Property and another rental property to the white tester, even after she repeatedly told Respondent that she was transferring from Milwaukee.
55. At the time Complainants sought to rent the Subject Property, they lived close enough to the Subject Property that Complainant [REDACTED] children would not have had to change schools if Respondent had agreed to rent to them.
56. Respondent admitted under oath that if he told a prospective renter that his fictitious partners had "laughed" at her application, he would have done so to dissuade her from applying.
57. Respondent offered and rented the Subject Property to white tenants for less than the rental rate quoted to Complainant [REDACTED]. Trasti, acting as Respondent's agent, quoted Complainant [REDACTED] a rental rate of \$875 per month, while Respondent quoted the white tester a rental rate of \$770 per month, before ultimately renting the Subject Property to a white couple for \$775 a month.
58. By refusing to negotiate for and/or otherwise making unavailable a dwelling to Complainants, *bona fide* prospective applicants, Respondent unlawfully denied and/or made housing unavailable based on race, in violation of 42 U.S.C. § 3604(a).
59. By treating white applicants more favorably by volunteering information about available rental properties to the white tester that was not made available to Complainant [REDACTED], and by quoting significantly lower rental prices to the white tester and the successful white renters, than Complainant [REDACTED], Respondent discriminated against Complainants in the terms, conditions or privileges of sale or rental of a dwelling in violation of 42 U.S.C. § 3604(b).
60. By Respondent stating to Complainant [REDACTED] that he does not rent to people from Milwaukee; that, if he rented to Complainant [REDACTED] the "neighbors may have trouble with it..." and that "It's a nice neighborhood there and I wanna keep it that

way," Respondent expressed a discriminatory preference or limitation based on race in violation of 42 U.S.C. § 3604(c).

61. Complainants and Complainant [REDACTED] children are aggrieved persons within the meaning of 42 U.S.C. § 3602(i). As a result of Respondent's discriminatory conduct, Complainant [REDACTED] suffered damages, including emotional distress and loss of a housing opportunity. Complainant [REDACTED] also suffered damages, including emotional distress and loss of a housing opportunity, both for herself and for her three children.
62. Specifically, as a result of Respondent's discriminatory conduct, Complainants were forced to locate alternate housing in a short time-frame, causing them considerable stress. While they initially located housing in Complainant [REDACTED] children's school district, that housing ultimately failed HUD's Housing Quality Standards for Section 8 rentals and Complainants were forced to move, again. This time, Complainant [REDACTED] children had to change schools. Their current home has a rodent problem. Complainants and their children have suffered emotional distress, as well, as a result of Respondent's discriminatory acts. Complainant [REDACTED] had never been rejected for rental before this incident. Complainant [REDACTED] felt "stepped on" by Respondent and "disgusted." Complainant [REDACTED] was concerned because she didn't know where they were going to live and if they would find a place to live in her children's school district in such a short time. She also felt badly about the things Respondent said to Complainant [REDACTED].

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to Section 3610(g)(2)(A) of the Act, hereby charges Respondent with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(a); (b) and (c) of the Act, and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondent as set forth above violates the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*;
2. Enjoins Respondent, his agents, employees, and successors, and all other persons in active concert or participation with him from discriminating because of race against any person in any aspect of the purchase or rental of a dwelling;
3. Awards such monetary damages as will fully compensate Complainants and the children of Complainant Robinson, aggrieved persons, for any and all damages caused by Respondents' discriminatory conduct; and
4. Awards a \$16,000 civil penalty against Respondent for violating the Act, pursuant to 42 U.S.C. § 3612(g)(3).

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

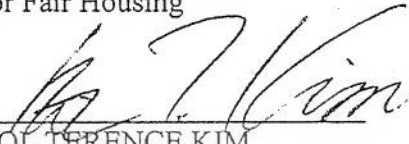
Respectfully submitted,



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